



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-1417

WELFORD WIGLESWORTH, JR.,
Petitioner,

v.

TEAMSTERS LOCAL UNION No. 592, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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1. Both Respondent and the Fourth Circuit below incorrectly rely on the Third Circuit's decision in *Harris v. International Longshoremen's Asso., Local 129*, 321 F.2d 801 (3rd Cir. 1963), in arguing that plaintiff under Section 104(a)(4) of the L.M.R.D.A., 29 U.S.C. §411(a)(4), was obligated to exhaust existing union hearing procedures prior to instituting this action in the District Court. *Harris* is not only factually inapposite to the controversy presently before the Court, but also

contains language indicating that where, as in the present case, it would have been futile for the Plaintiff to follow the union hearing procedures, exhaustion is not required.

As noted in the Petition to this Court (p. 8, n.2), Wigglesworth had fruitlessly exhausted his internal remedies in the election of 1972, all the way up the union chain of command to the President of the International Union, Frank Fitzsimmons. Plaintiff received no word on the status of his grievance from Mr. Fitzsimmons' office. Furthermore, under Article XIX of the Teamsters' Constitution (Petition, App. A, p. 8a) a member is not afforded the right to redress such grievances under the L.M.R.D.A., as: 1) freedom of speech 2) freedom to participate in the union, 3) freedom to speak out against the union without fear of redress; 4) the right to be advised of his rights under the L.M.R.D.A.; 5) the right to be given financial information and numerous other rights under the L.M.R.D.A. The inadequacy of the union's internal procedures is illustrated by the fact that the District Court ordered the Local's by-laws to be amended to state that "the rights therein set forth are secured by federal law," and the District Court's further order that copies of the L.M.R.D.A. be mailed to all members of the Local within one month of the entry of the order. (Plaintiff's Petition, App. D, p. 27a).

Thus, the circumstances surrounding this controversy, contrast significantly with the factual pattern present in *Harris*. Unlike the situation present here, in *Harris*, "The plaintiffs (did) not seriously question that such disciplinary proceedings under the I.L.A. constitution could not give them the relief which they (sought). *Harris, supra* at 804. Additionally, the *Harris* court noted that under the union procedures there involved

"a substantial likelihood (existed) that corrective action would be forthcoming within the statutory period if plaintiffs proved their charges." Wigglesworth's inability to obtain *any* response from the Teamsters' hierarchy in 1972 coupled with the fact that the local executive board consisted solely of Hodson appointees and those who had run on his ticket in the 1972 campaign indicates that neither of the two paths open to Wigglesworth under Article XIX of the Teamster's Constitution (Petition App. A, p. 8a) could reasonably be believed by Wigglesworth to have afforded any likelihood of a fair hearing or corrective remedy. In short, unlike the situation described by the *Harris* Court, the appeals structure confronting Wigglesworth was illusory and inadequate to redress his grievance under the L.M.R.D.A., and therefore Wigglesworth was not obligated to exhaust union procedures. *Burke v. International Brotherhood of Boilermakers, Iron Shipbuilders, Forgers and Helpers*, 417 F.2d 1063 (9th Cir. 1969).

The Third Circuit, itself applied the limiting language of the *Harris* opinion in its decision of *Baron v. North Jersey Newspaper Guild, Local 173, American Newspaper Guild, AFL-CIO*, 342 F.2d 423 (3rd Cir. 1965). The Court cited *Harris* for the proposition that a party need not exhaust his union grievance procedures, "where a showing has been made that a union cannot do substantial justice because of the inadequacy of procedural mechanisms or the existence of clear substantive bias against the party seeking judicial relief." *Id.* at 424.

In *Harris* the court indicated that exhaustion was required because there was nothing in the record indicating "that it would have been futile for (the member) to make a good faith effort to follow the

union hearing procedures..." 321 F.2d at 806. Thus, unlike Wiglesworth, in *Harris* the plaintiffs did not question the effectiveness of the union grievance machinery, nor had they concluded that the grievance process would have been futile. Unlike Wiglesworth, the plaintiffs in *Harris* were not confronted with a procedurally inadequate union grievance mechanism nor were they faced with the consistently hostile union hierarchy confronting Wiglesworth.¹

2. At page 3 of its Brief, Respondent quotes the Fourth Circuit's statement that the court will not "assume the role of post-parliamentarian without first requiring exhaustion on the part of the plaintiff." This language is disturbing not only because it mistates the importance of this case, but also because it portends a ruling by the Fourth Circuit that Wiglesworth's L.M.R.D.A. claim is without merit. While the Fourth Circuit found that the actions taken against Wiglesworth constituted at best a departure from the basic rules of orderly, democratic procedures (Petition, App. A, pp. 9a-10a), it is clear that Wiglesworth's claim involves much more than a conflict over union parliamentary procedure. At issue here are the questions of free speech and democracy in the powerful Teamsters Union. As Judge Warriner noted so accurately below:

The Plaintiff here has been mistreated by his officers, persons who, under the Act, and in good conscience and in good faith, should uphold the highest standards of treatment, and, to the contrary, attempted to intimidate, threaten, stifle,

¹The detailed fact pattern concerning Wiglesworth's dealings with both local and national Teamster leadership is set forth in the District Court's Findings of Fact and Conclusions of Law. (Petition, Appendix D).

and put in disrepute, a member of the Union. If that is not a violation of the Act, under a reasonable reading of the Act, then the Act has no efficacy. If the Act means anything, it means that a member of the Union cannot be treated as Mr. Wiglesworth has been treated.

While the Fourth Circuit appears to be characterizing Wiglesworth's claim as de minimus infraction of parliamentary procedure (Petition, App. A, pp. 9a-10a), it should be noted that in the *Harris* case on which both the court and respondent rely, the Third Circuit stated that actions similar to those taken by the Teamsters against Wiglesworth constituted violations of the L.M.R.D.A. 321 F.2d at 803. In *Harris*, the court stated that, if proven, Plaintiffs' allegations that the defendant union president knowingly and willfully made erroneous parliamentary rulings, permitted conversations while members were recognized to speak, vilified one of the plaintiffs when he attempted to address a meeting, refused to permit debate on certain debatable questions, and declined to entertain appeals from his rulings, would constitute violations of the L.M.R.D.A. Certainly, Union President Hodson's repeated threats, refusals to recognize, and denial of pertinent financial information to Wiglesworth, also constitutes an L.M.R.D.A. violation under the ruling of the Third Circuit.

The significance of the Teamsters' violations of the L.M.R.D.A. in this case is increased since Wiglesworth was a candidate for the presidency of the Teamsters twice in 1972, and an announced candidate for office in 1975. Thus when Wiglesworth was told to sit down and shut up over and over again, the union was denying Wiglesworth's constituency the right to be heard. The Fourth Circuit's suggestion that Wiglesworth's claim is

insubstantial neglects the power structure of the Teamsters Union, and the ultimate significance of this case. The question before this Court is the extent to which private litigants like Wigglesworth will be afforded an opportunity to protect their L.M.R.D.A. rights. This is a rare and exceptional case in which one man has attempted to enforce his L.M.R.D.A. rights to check union autocracy and corruption.

The Fourth Circuit's ruling in this case has created an overly narrow view not only of the exhaustion requirement of Section 101(a)(4) of the L.M.R.D.A.², but also of the union member's federally secured right to be heard under Section 101(a)(2) of the L.M.R.D.A.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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²It should be noted that the exhaustion requirement of Section 101(a)(4) of the L.M.R.D.A. is permissive. The provision states "...That such member *may* be required to exhaust reasonable hearing practices... within such organization, before instituting legal or administrative proceedings..." (emphasis supplied).